

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

WILLIAM J. WHITSITT,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

Case No. 2:21-cv-02019-JDP (HC)

ORDER FINDING THAT THE PETITION
DOES NOT STATE A COGNIZABLE CLAIM
UNDER SECTION 2254 AND GRANTING
LEAVE TO AMEND WITHIN THIRTY
DAYS

ECF No. 1

Petitioner, proceeding without counsel, seeks a writ of habeas corpus under 28 U.S.C. § 2254. After reviewing the petition, I find that the petition cannot proceed under § 2254. It must proceed, if at all, under § 2241. Additionally, the petition is impossible to understand and must be re-drafted if it is to be served.

The amended petition is before me for preliminary review under Rule 4 of the Rules Governing Section 2254 Cases. Under Rule 4, the judge assigned to the habeas proceeding must examine the habeas petition and order a response to the petition unless it “plainly appears” that the petitioner is not entitled to relief. *See Valdez v. Montgomery*, 918 F.3d 687, 693 (9th Cir. 2019); *Boyd v. Thompson*, 147 F.3d 1124, 1127 (9th Cir. 1998).

Petitioner alleges that he is being unlawfully held in pre-trial detention. ECF No. 1 at 2. The specifics of his claim are, frankly, impossible to understand. The petition is one-hundred and eleven pages long and poorly organized. Petitioner’s failure to use section breaks or paragraphs

1 does the reader no favors. As such, I could not, if I ordered service, expect respondent to file a
2 substantive answer. Additionally, this action, insofar as it challenges pre-trial detention, must
3 proceed under § 2241, not § 2254. *See White v. Lambert*, 370 F.3d 1002, 1006 (9th Cir. 2004)
4 (“The general grant of habeas authority in § 2241 is available for challenges by a state prisoner
5 who is not in custody pursuant to a state court judgment—for example, a defendant in pre-trial
6 detention or awaiting extradition.”). I will give petitioner a chance to amend his petition.

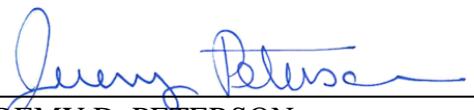
7 Additionally, I will deny his motion for treatment. ECF No. 10 at 1. Therein, he asks that
8 I order his custodians to provide “competency training.” *Id.* This request appears to pertain to
9 the conditions of his confinement and, as such, should be raised in a separate section 1983 action.

10 It is ORDERED that:

- 11 1. Petitioner’s application to proceed in forma pauperis, ECF No. 12, is GRANTED.
- 12 2. Petitioner may file an amended § 2241 petition within thirty days of this order’s
entry. If he does not, I will recommend that the current petition be dismissed for the reasons
stated in this order.
- 15 3. The Clerk of Court is directed to send petitioner a federal habeas form.
- 16 4. Petitioner’s motion for treatment, ECF No. 10, is DENIED.

17 IT IS SO ORDERED.
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19 Dated: March 3, 2022


20 JEREMY D. PETERSON
21 UNITED STATES MAGISTRATE JUDGE
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